

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

1 Based on the stipulation of the parties and *Bittaker v. Woodford*, 331 F.3d 715
2 (9th Cir. 2003) (*en banc*), and good cause having been shown, it is hereby ordered that
3 the following Protective Order shall apply to (1) documents and materials, including
4 declarations, materials derived from the trial team, or trial counsel files that Petitioner
5 provides to Respondent during this habeas action; (2) any related testimony provided
6 at an evidentiary hearing in this matter; and (3) any reference to such documents or
7 testimony in the parties' pleadings submitted to the Court:

8 1. Declarations from trial counsel or trial team members, materials from
9 Petitioner's trial counsel's files (including the files of other defense team members)
10 produced to the Respondent in this matter or filed with or otherwise submitted to this
11 Court, shall be subject to this Protective Order and shall remain confidential and
12 sealed. At the evidentiary hearing to be held in this case, any testimony by Petitioner,
13 Petitioner's experts, trial counsel, and any trial defense team member shall be subject
14 to this Protective Order and shall remain confidential and sealed. Petitioner contends
15 that the testimony provided by these witnesses is subject to claims of privilege and/or
16 protected from disclosure by the attorney work product doctrine.¹

17 2. All privileged documents and testimony produced to Respondent in this
18 action may be used only for purposes of litigating this habeas corpus proceeding by
19 (a) Petitioner and the members of his legal team, i.e., lawyers, paralegals,
20 investigators, and support staff, assigned to *Carle v. Cash* by the Office of the Federal
21 Public Defender, and persons retained by Petitioner's counsel to litigate this matter,
22 including, but not limited to, outside investigators, consultants and expert witnesses;
23 and (b) Respondent and the members of his legal team, i.e., lawyers, paralegals,
24 investigators, and support staff, assigned to *Carle v. Cash* by the California
25 Department of Justice, Attorney General's Office, and persons retained by

27 ¹ Materials and testimony subject to a privilege and/or subject to the attorney
28 work product doctrine will be referred to collectively hereinafter as "privileged"
materials.

1 Respondent's counsel to litigate this matter, including, but not limited to, outside
2 investigators, consultants, and expert witnesses. This Protective Order extends to
3 members of the legal teams and all persons retained by the parties to litigate this
4 matter. All such individuals shall be provided with a copy of this Protective Order.

5 3. Except for disclosure to the persons and agencies described in Paragraph
6 2, disclosure of the contents of the privileged documents and testimony and the
7 documents and testimony themselves shall not be made to any other persons or
8 agencies, including, but not limited to, prosecutorial agencies and law enforcement
9 personnel, without this Court's order.

10 4. Documents and testimony that Petitioner contends are privileged shall be
11 clearly designated as such by labeling the documents or testimony in a manner that
12 does not prevent reading the text of the document.

13 5. All documents and testimony designated as privileged by Petitioner that
14 are submitted to this Court shall be submitted under seal in a manner reflecting their
15 confidential nature and designed to ensure that the privileged material will not become
16 part of the public record. At the evidentiary hearing to be held in this matter,
17 privileged testimony shall be clearly designated as such by marking the transcripts of
18 the proceeding. Any pleading or other papers served on opposing counsel or filed or
19 lodged with the Court that contains or reveals the substantive content of the privileged
20 matter shall be filed under seal, and shall include a separate caption page that includes
21 the following confidentiality notice or its equivalent:

22 “TO BE FILED UNDER SEAL

23 THIS PLEADING OR DOCUMENT CONTAINS CONFIDENTIAL
24 INFORMATION SUBJECT TO A PROTECTIVE ORDER AND IS NOT TO
BE OPENED NOR ITS CONTENTS DISPLAYED OR DISCLOSED”

25 6. If privileged documents or documents containing privileged matters are
26 filed with this Court, they shall be filed with the Clerk of this Court in sealed
27 envelopes prominently marked with the caption of the case and the foregoing
28 Confidentiality Notice. The Clerk of the Court is directed to maintain the

1 confidentiality of any documents filed in accordance with the above. Insofar as
2 reasonably feasible, only confidential portions of the filings shall be under seal, and
3 the parties shall tailor their documents to limit, as much as is practicable, the quantity
4 of material that is to be filed under seal. When a pleading or document contains only
5 a limited amount of privileged content, a party may file a complete copy under seal
6 and at the same time file on the public record an additional, redacted version of the
7 document, blocking out the limited matter comprising the confidential portions.

8 7. Pursuant to *Bittaker v. Woodford*, 331 F.3d 715 (9th Cir. 2003) (*en banc*),
9 disclosure of documents from trial counsel's files in this action, and any related
10 testimony by Petitioner or members of Petitioner's trial team at a deposition or
11 evidentiary hearing in this case, does not constitute a waiver of Petitioner's rights
12 under the Fifth and Sixth Amendments to the United States Constitution in the event
13 of any retrial.

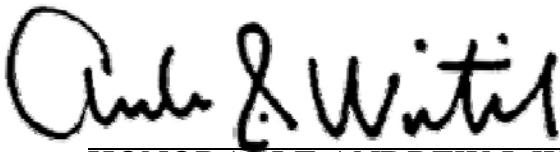
14 8. Previously Filed or Lodged Papers: No later than 30 days after the filing
15 of this Protective Order, Petitioner shall identify any other previously filed or lodged
16 pleading, order, declaration, transcript, or other document or item, or any part thereof,
17 that contains or discloses the substance or content of the privileged matter. For each
18 such item, following consultations with Respondent, Petitioner shall file a Redacted
19 Version of the item, blocking out the matter comprising the privileged matter; and for
20 each such originally filed item, Petitioner shall supply the clerk with a "To Be Filed
21 Under Seal" caption page and envelope that conform to the Privileged Caption, and
22 the clerk shall insert the filed or lodged item in the envelope, seal the item, and re-file
23 it under seal.

24 9. This Order shall continue in effect after the conclusion of the habeas
25 corpus proceedings and specifically shall apply in the event of a retrial of all or any
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1 portion of Petitioner's criminal case. Any modification or vacation of this Order shall
2 only be made upon notice to and an opportunity to be heard from both parties.
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4 IT IS SO ORDERED.

5 DATED: 7/17/2014



6 HONORABLE ANDREW J. WISTRICH
7 United States Magistrate Judge

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9 Presented By:

10 /s/ Marta VanLandingham
11 MARTA VANLANDINGHAM
12 Deputy Federal Public Defender
13 Counsel for Petitioner
14 ERIC BRENDAN CARLE

15 /s/ Kevin Vienna
16 KEVIN VIENNA
17 Supervising Deputy Attorney General

18 Counsel for Respondent
19 BRENDA M. CASH

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